LIBRARY
SUPREME COURT, U. S.

FILED
MAY 31 1968
JOHN F. DAVIS, CLERK

No. 1356

In the Supreme Court of the United States

OCTOBER TERM, 1967

SIDNEY BROOKS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
FRED M. VINSON, JR.,
Assistant Attorney General,
BEATRICE ROSENBERG,
ROBERT G. MAYBACK,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 1386

SIDNEY BROOKS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

In a jury trial in the United States District Court for the Eastern District of Pennsylvania, petitioner was convicted on Counts I, II and V of an indictment charging conspiracy, rescuing a safe deposit box seized by the Internal Revenue Service (a violation of 26 U.S.C. 7212(b)) and receipt of this box and money contained therein, which had been stolen from a federally insured bank, in violation of 18 U.S.C. 2113(c) (R. 2a, 5a–10a).[1] On February 14, 1967, petitioner was sentenced to imprisonment for a total of 12 years and to fines aggregrating $80,000 (R. 3a). On February 5, 1968, the conviction was

[1] Three others were indicted with petitioner, but he alone stood trial.

307-993—68

affirmed. On March 11, 1968, a petition for rehearing *en banc* was denied. The petition for a writ of certiorari, filed on May 2, 1968, is out of time under Rule 22-2 of this Court. In any event, there is no reason for further review of petitioner's contentions.

Evidence at the pretrial motion to suppress and at the trial showed that on March 25, 1965, one Bricker stated to Detective Ryan of the Philadelphia Police Department that on January 30, 1964, he and the petitioner had committed a burglary in the apartment of Dr. Pearlstein in which jewelry worth $16,000 had been taken (R. 14a–15a). Bricker said he gave the fruits of the burglary to petitioner, who gave him $1,000 (R. 16a, 21a). Ryan's investigation confirmed that the Pearlstein burglary had occurred (R. 17a). The police had information that petitioner had a safe deposit box in which he stored cash and valuables (R. 10b). On April 5, 1965, the police obtained a warrant for petitioner's arrest (R. 14a, 23a).[2]

On April 13, 1965, Detective Ryan, by authority of the warrant, arrested petitioner while he was driving his automobile (R. 23a–25a). Ryan noticed a safe deposit key, No. H–172, attached to the ignition key ring (R. 26a, 27a). Police investigation showed that the seized key for the safe deposit box in a Philadelphia bank had been issued in March 1965 in the name of Howard Davis at 1616 Benson Street, the address of petitioner's brother (R. 29a–30, 42a, 44b).

On that same day (April 13) Detective Snyder obtained a search warrant for the safe deposit box (R.

[2] The defense did not not challenge the validity of the arrest warrant (R. 61b).

30a). In his supporting affidavit Snyder set forth Bricker's[3] and the police investigative information as to the Pearlstein robbery and the facts relating to petitioner's arrest and to the safe deposit key (R. 11a–12a). Affiant stated that during ten years of investigating over 100 burglaries he had known of cases where burglars used safe deposit boxes to store stolen jewelry (R. 12a). Affiant said that petitioner had a total of eight arrests, and was awaiting trial for a previous burglary for which Bricker had been convicted (R. 12a–13a). Affiant mentioned that since no one named Howard Davis resided at 1616 Benson Street, the address of petitioner's brother, "it is believed that Mr. Davis is, in fact, Sidney Brooks" (R. 13a). Affiant further stated that, because of the facts stated and his police experience, he believed that "all or part of the stolen jewelry is in Brooks' home or a safe deposit box" (R. 13a).

On the following day (April 14, 1965), on the basis of the search warrant, the officers opened the safe deposit box and found $100,000 in currency and two keys to a safe deposit box in a different bank (R. 32a, 48a–49a, 52a–53a, 76a–77a).[4] When no jewelry was found in the box, the officers closed it, notified the Internal Revenue Service, and turned the key over to one of its agents (R. 33a–34a, 53a–54a, 99a). The Service

[3] According to the affidavit, during the month prior to March 25, 1965, Bricker had supplied the Philadelphia Police Department with reliable information (R. 11a).

[4] The officers obtained a search warrant for the box in the other bank and found the box empty. The bank manager, when shown a photograph of petitioner, said that petitioner had rented the box (R. 48a).

filed in the District Court a notice of a federal tax lien for $100,000 on petitioner's 1965 income, the assessment date being April 14, 1965 (R. 108b). The Service served upon a bank official a notice of seizure, a notice of federal tax lien, and a notice of levy (R. 77a–79a). A seal and a warning notice of government seizure were placed on the safe deposit box (R. 79a, 84a). Petitioner, who was served with a tax bill and a notice and demand for taxes due, said that he would communicate with his attorney (R. 86a, 88a–89a).

On April 27, 1965, petitioner obtained a temporary Federal court injunction, enjoining the Service from taking possession of any of the money (R. 93b–94b). Thereafter, on December 30, 1965, as described in the opinion of the court of appeals (Pet. App. 4a), petitioner and his co-conspirators forcibly removed the safe deposit box from the bank. Petitioner received $80,000 of its contents.

Prior to trial, petitioner moved to suppress evidence concerning the search of the safe deposit box and its contents on the ground that the search was without probable cause and therefore in violation of his constitutional rights, or, in the alternative, that it was in violation of a Pennsylvania statute (Act of September 20, 1961, P.L. 1532, No. 651, § 1, 19 P.S. § 591) (Pet. App. 17a, fn. 2). The pretrial motion to suppress was denied (R. 2a, 61b–63b) and a similar motion was denied at the trial (Pet. App. 5a).

1. The search warrant was issued on probable cause. *United States* v. *Ventresca*, 380 U.S. 102. Detective Synder's affidavit showed that, in accordance with

information supplied by a reliable informant, petitioner had participated in the Pearlstein burglary and the stolen jewelry had been given to him. It showed that petitioner had a key for a safe deposit box and that, as an experienced burglar, he might reasonably be expected to use a safe deposit box to hide the jewelry. In light of these circumstances, the magistrate reasonably concluded that there was probable cause to believe that the jewelry would be in the box.

The validity of the search warrant was not affected by the fact that, at the time of its issuance, the police were not certain that the safe deposit box had been rented by petitioner. When investigation showed that the box had been rented in the fictitious name of Davis but with use of the address of petitioner's brother, the magistrate could reasonably believe that it was probable that petitioner, who had the key in his possession, had rented the box. Considering the nature of the items involved, it was not of controlling importance that approximately 14 months had elapsed from the time of the Pearlstein burglary until the rental of the safe deposit box.

2. The court below correctly applied *Elkins* v. *United States*, 364 U.S. 206, and *Rios* v. *United States*, 364 U.S. 253, in ruling that in a federal prosecution the question whether there has been an unreasonable search and seizure by state officers must be tested under federal standards and not in terms of the Pennsylvania statute (Act of September 20, 1961, P.L. 1532, No. 651, § 1, 19 P.S. § 591) providing for notice to a

safe deposit box holder when his box is to be opened. The purpose of the exclusionary rule of *Elkins* is to vindicate rights conferred by the Fourth Amendment. When no federally conferred rights have been violated and there has been no misconduct by federal officers, there is no requirement that the evidence be excluded.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.
FRED M. VINSON, JR.,
Assistant Attorney General.
BEATRICE ROSENBERG,
ROBERT G. MAYSACK,
Attorneys.

MAY 1968.

U.S. GOVERNMENT PRINTING OFFICE: 1968